



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,584	01/22/2002	Anthony Nikodym	22176-3	4133

29127 7590 07/30/2003

HOUSTON ELISEEVA
4 MILITIA DRIVE, SUITE 4
LEXINGTON, MA 02421

EXAMINER

ELVE, MARIA ALEXANDRA

ART UNIT	PAPER NUMBER
1725	

DATE MAILED: 07/30/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/683,584	NIKODYM ET AL.
	Examiner	Art Unit
	M. Alexandra Elve	1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 June 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Art Unit: 1725

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 & 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Church (US Pat. 4,463,243) in view of Marshall et al. (US Pat. 4,80,131).

Church discloses a welding system in which an electric arc system uses gas mixtures of argon and carbon dioxide. The electrode currents are in the range of 100 to 1100 amperes. A schematic of the system reveals a reel, which supplies welding wire to a wire feed device, which pushes the wire through a flexible conduit, and the latter terminates into a welding gun. A power supply supplies current to the welding wire and includes normal voltage and amperage controls. A shielding gas tank supplies gas to a flow control device, which in turn feeds the gas to a conduit and the welding gun.

Although Church discloses an electrode the specific composition is not taught.

Marshall et al. discloses a welding wire having a metallic sheath enclosing a core wire and filler powder materials. Arc stabilizers are added to the composite wires and

Art Unit: 1725

include graphite and potassium compounds. These types of compounds are present in amounts of up to about 3.5 percent by weight of the total wire. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a wire composition, as taught by Marshall et al., in the Church welding system, because these are merely variations on the types of welding wires available.

The exact amounts of each of the constituents as presently claimed are not disclosed in the prior art; however, the prior art compositions closely approximate or overlap applicants claimed composition. It has been held that one of ordinary skill in the art at the time of the invention would have considered the claimed compositions to have been obvious because close approximation or overlapping ranges in a composition is considered to establish a *prima facie* case of obviousness. See In re Malagari, 182 USPQ 549, Titanium Metals v. Banner 227 USPQ 773, In re Nehrenberg 126 USPQ 383.

Claims 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall et al. (US Pat. 4,800,131).

Marshall et al. discloses a welding wire having a metallic sheath enclosing a core wire and filler powder materials. Arc stabilizers are added to the composite wires and include graphite and potassium compounds. These types of compounds are present in amounts of up to about 3.5 percent by weight of the total wire. It would have been

Art Unit: 1725

obvious to one of ordinary skill in the art at the time of the invention to use a wire composition, as taught by Marshall et al., in the Church welding system, because these are merely variations on the types of welding wires available.

The exact amounts of each of the constituents as presently claimed are not disclosed in the prior art; however, the prior art compositions closely approximate or overlap applicant's claimed composition. It has been held that one of ordinary skill in the art at the time of the invention would have considered the claimed compositions to have been obvious because close approximation or overlapping ranges in a composition is considered to establish a *prima facie* case of obviousness. See In re Malagari, 182 USPQ 549, Titanium Metals v. Banner 227 USPQ 773, In re Nehrenberg 126 USPQ 383.

Response to Amendment

Upon carefully reviewing Applicant's arguments filed June 12, 2003 the Examiner acknowledges applicants amendment of claims 1-2, 8 & 12.

Applicant's arguments filed June 12, 2003 (paper #5) have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach a wire electrode comprising a combination of graphite and compounds of potassium wherein the combination of graphite and potassium in the core composition does not exceed 5%wt. The examiner respectfully disagrees because Marshall et al. discloses arc stabilizers, which are added to the composite wires and include graphite and potassium compounds. These types of compounds are present in amounts of up to about 3.5 percent by weight of the total wire.

Applicant argues that Church does not disclose the composition of the wire. The examiner respectfully notes that the 35 USC 103 claim rejections were based on a combination of art, that is, instant claims were unpatentable over Church and Marshall et al. Unobviousness cannot be established by attacking the references individually when the rejection is based on a combination of references. *In re Novak* 16 USPQ 2d 2041, 2043 (Fed. Cir. BPAI 1989); *In re Merck & Co.* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); *In re Keller* 208 USPQ 871 (CCPA 1981); *Ex parte Varga* 189 USPQ 204; *Ex parte Campbell* 172 USPQ 91; *In re Scheckler* 168 USPQ 716 (CCPA 1971); *In re Young* 159 USPQ 725; *In re Lyons* 150 USPQ 741.

Art Unit: 1725

Applicant argues that Marshall only mentions potassium titanate. Examiner respectfully notes that this is a potassium compound and thus covers instant claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Alexandra Elve whose telephone number is (703) 308-0092. The examiner can normally be reached Monday to Friday from 6:30 AM to 3:00 PM.

Art Unit: 1725

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn, can be reached on (703) 308-3318.

Any inquiry of general nature to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-0661.

July 27, 2003.



ALEXANDRA ELVE
PRIMARY EXAMINER